

ESTTA Tracking number: **ESTTA124842**

Filing date: **02/13/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92041307
Party	Plaintiff Qiagen GmbH
Correspondence Address	Lorraine Linford Seed Intellectual Property Law Group PLLC 701 Fifth Avenue Ste 6300 Seattle, WA 98104-7092
Submission	Other Motions/Papers
Filer's Name	Lorraine Linford
Filer's e-mail	Lorrainel@SeedIP.com, Litcal@SeedIP.com
Signature	/Lorraine Linford/
Date	02/13/2007
Attachments	SP-LinfordDec-MotCompel.pdf (41 pages)(960552 bytes)

2. On July 14, 2003, at my instruction, Petitioner's First Set of Requests for Production of Documents to Respondent and Petitioner's First Set of Interrogatories directed to Respondent Bio-Rad Laboratories, Inc. ("Respondent" or "Bio-Rad") were served by first-class mail on Bruce Schwab, attorney of record for Respondent. These discovery requests sought information and documents concerning Respondent's selection, adoption and use of the subject MDX mark, third-party use of the trademark or term MDX, and facts supporting Respondent's defense to Petitioner's allegations and Respondent's secondary meaning in the mark. A copy of

Petitioner's First Set of Interrogatories is attached hereto as Exhibit 1. A copy of Petitioner's First Set of Requests for Production is attached hereto as Exhibit 2.

3. Responses to these discovery requests were initially due on August 18, 2003 and extended 60 days, to October 17, 2003, by agreement of counsel. Beginning in October, 2003, the parties to this proceeding filed several stipulated requests for suspension to allow the parties to negotiate a settlement. The parties eventually reached an agreement in principle. I sent Bio-Rad's counsel, Mr. Schwab, a settlement letter outlining those terms on March 20, 2006.

4. On November 8, 2006, I wrote a follow-up letter to Mr. Schwab, requesting Bio-Rad's formal response to my letter and enclosing copies of QIAGEN's discovery requests. I advised Mr. Schwab that if I did not receive Bio-Rad's response to the March 20 settlement letter by November 17, 2006, QIAGEN would require that Bio-Rad respond to QIAGEN's outstanding discovery requests by no later than December 15, 2006. A copy of that letter is attached hereto as Exhibit 3.

5. On November 17, 2006, Mr. Schwab sent me Bio-Rad's counterproposal. I responded to his November 17 correspondence on December 11, 2006, rejecting the counterproposal and requesting that Bio-Rad respond to the discovery requests by no later than January 16, 2007. A copy of my December 11 letter is attached hereto as Exhibit 4.

6. During the month of January, 2007, Mr. Schwab and I exchanged a series of emails negotiating the language of a written settlement agreement.

7. On February 1, 2007, I sent an email to Mr. Schwab requesting that he provide us with a signed copy of the settlement agreement by no later than February 9, 2006. On February 9, 2006, Mr. Schwab advised me by email that his client was agreeable to the terms of the agreement, but that he was not yet able to provide a signed copy. On February 9, I wrote back, noting that QIAGEN's testimony period opens February 15, 2007 and that I would be filing a motion to compel Bio-Rad's responses to QIAGEN's outstanding written discovery pending signature of the agreement. A copy of our February 9, 2007 email exchange is attached hereto as Exhibit 5.

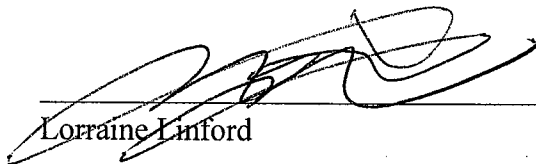
8. I understand, based on my communications with Mr. Schwab, that Bio-Rad is prepared to sign a finalized written settlement agreement. I am hopeful of receiving a signed copy shortly, but do not know when the agreement will be signed and forwarded to me.

9. In the event that the parties' settlement is not finalized, QIAGEN needs to go forward with this proceeding, which has been pending since October, 2002. QIAGEN needs the discovery requested from Bio-Rad in order to prepare for and take testimony.

10. QIAGEN is prepared to withdraw this motion to compel if it receives either (a) the signed Settlement Agreement, or (b) Bio-Rad's discovery responses.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed at Seattle, Washington this Bth day of February, 2007.




Lorraine Linford

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2007, the foregoing **DECLARATION OF LORRAINE LINFORD IN SUPPORT OF PETITIONER'S MOTION TO COMPEL RESPONSES TO WRITTEN DISCOVERY REQUESTS** was served upon the Petitioner's counsel of record by United States first-class mail, postage prepaid, addressed as follows:

Bruce W. Schwab, Esq.
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834



Annette Baca

EXHIBIT 1

successors, assignees, agents, representatives, and attorneys, and any persons who at any time acted by, through, or on behalf of any of them.

B. "Respondent," "Bio-Rad," "you" or "your" means Bio-Rad Laboratories, Inc. and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiary or affiliate, predecessors, successors, assignees, agents, representatives, and attorneys, and any persons who at any time acted by, through, or on behalf of any of them.

C. The "'028 Registration" refers to Respondent's United States Trademark Registration No. 2,108,028, which is the subject of this proceeding.

D. "Respondent's Mark" or "MDX" refers to the alleged trademark shown in the '028 Registration.

E. "Documents" shall have the same meaning and scope as in Rule 34(a) of the Federal Rules of Civil Procedure and shall include without limitation correspondence, memoranda, reports, minutes of meetings, agreements, notes, studies, plans, analyses, work papers, statistical and financial records, stationery, letterhead, press releases, records or notes of meetings, conferences, telephone calls, or other conversations, invoices, checks, printouts, photographs, microfilms, microfiche, data processing tapes, disks, or other records, phonographs, tape or other recordings, data compilations and all copies of any documents that contain any notation or otherwise differ from the original or other copies, in the possession, custody, or under the control of Applicant, and specifically including any and all drafts of the above and any and all handwritten notes or notations in whatever form.

F. When used in association with a person, "identify" means to state the person's full name, present or last known home and business addresses, present place of business or employment, present position, and business and home telephone numbers.

G. When used in association with a document, "identify" means to state the document's title or a brief description of its nature, and its date, author, recipient(s) (including all recipients of copies), and subject matter.

H. When used in association with a company, "identify" means to state the company's full legal name, its trading name(s) if any, its place of incorporation if any, its principal business address, and the identity of the person or persons having knowledge of the matter with respect to which the company is named.

I. Wherever used herein, the singular shall be deemed to include the plural, the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine and the feminine shall be deemed to include the masculine; the disjunctive ("or") shall be deemed to include the conjunctive ("and"), and the conjunctive ("and") shall be deemed to include the disjunctive ("or"); and each of the functional words "each," "every," "any" and "all" shall be deemed to include each of the other functional words.

J. A document "relating," "related," or "which relates" to any given subject means any document that constitutes, contains, embodies, evidences, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

K. If a claim of privilege is asserted concerning any document for which identification is requested, please:

1. Identify the document with sufficient particularity to allow Respondent to bring the matter before the Board. That identification should include its date, author, recipients and subject matter;
2. State the nature of the privilege asserted; and
3. State in detail the actual basis for the claim of privilege.

L. To the extent that you consider any of the following interrogatories subject to objection, respond to that part of each interrogatory to which you do not object, and separately describe that part of the interrogatory to which you object and each ground for objection.

M. The terms "Petitioner" and "Respondent," as well as a party's full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliate. This definition is not intended to impose a discovery obligation on any person who is not a party to the proceeding.

N. All documents produced in response to interrogatories should be arranged as they are kept in the ordinary course of business, or should be organized and labeled to correspond with the interrogatory numbers in these interrogatories.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify with particularity each product and/or service ever marketed or sold by Respondent under or in association with "MDX."

RESPONSE:

INTERROGATORY NO. 2:

As to each product and/or service identified in response to Interrogatory No. 1,

(a) State the date that you commenced using and, where applicable, ceased using "MDX" in association with such product or service.

(b) Describe the manner in which have used and/or are using "MDX" in association with such product or service.

(d) Identify the persons most knowledgeable concerning Applicant's use of "MDX" in association with each of the products and/or services identified in response to Interrogatory No. 1.

RESPONSE:

INTERROGATORY NO. 3:

Has Respondent ever used, or is Respondent currently using, "MDX" in connection with the sale or promotion of molecular diagnostics products and/or services?

RESPONSE:

INTERROGATORY NO. 4:

If the answer to Interrogatory No. 3 above is in the affirmative, state the date Respondent first used "MDX" in connection with the sale or promotion of any molecular diagnostics products and/or services.

RESPONSE:

INTERROGATORY NO. 5:

Identify all individuals who were involved in the process of selecting "MDX" for Respondent's use.

RESPONSE:

INTERROGATORY NO. 6:

Identify the individual primarily responsible for Respondent's adoption of "MDX" for use as a mark.

RESPONSE:

INTERROGATORY NO. 7:

If Respondent is aware of any use of the term MDX in connection with molecular diagnostics products and/or services by any person or entity other than the parties to this proceeding,

- (a) Identify each such person or entity;
- (b) Identify the products and/or services sold;
- (c) State when Respondent became aware of such use;
- (d) Describe how Respondent became aware of such use.

RESPONSE:

INTERROGATORY NO. 8:

If Respondent is aware of any use by any person or entity of the term MDX as a descriptive term or acronym used in connection with molecular diagnostics,

- (a) Describe how and when the term was used;
- (b) Identify the person or entity using the term;
- (c) State when Respondent became aware of such use;
- (d) Describe how Respondent became aware of such use.

RESPONSE:

INTERROGATORY NO. 9:

Identify all searches and/or investigations conducted or caused to be conducted, or any opinions received by Respondent, on a formal or informal basis, concerning availability and possible conflicts arising out of Respondent's use or adoption of "MDX."

RESPONSE:

INTERROGATORY NO. 10:

State whether Respondent has ever received any opinion, formal or informal, concerning possible trademark conflicts with Petitioner, and for each such opinion identify the date thereof and identify each and every person who prepared such opinion or who has any knowledge of the preparation or results of such opinion.

RESPONSE:

INTERROGATORY NO. 11:

Identify any trademark dispute(s) relating to the use or registration of Respondent's "MDX," including, without limitation, litigation, opposition proceedings, cancellation proceedings, cease and desist requests and/or informal objections, in which Respondent and a party other than Opposer have ever been involved.

RESPONSE:

INTERROGATORY NO. 12:

With respect to each dispute or objection identified in your response to Interrogatory No. 11:

- (a) State the date of commencement and date of termination;
- (b) Identify the adverse party or parties;

- (c) Describe the present status of the matter;
- (d) If the matter has been resolved, state the manner in which it was resolved;
- (e) Identify the person within Respondent's organization most knowledgeable as to the facts set forth in response to subparts (a) through (e) above.

RESPONSE:

INTERROGATORY NO. 13:

State the annual gross dollar revenue derived by Respondent for all products or services sold under or in connection with "MDX" for each year since commencement of use to present.

RESPONSE:

INTERROGATORY NO. 14:

State the dollar amount expended, on a yearly basis, in promoting and advertising Respondent's "MDX" products and/or services.

RESPONSE:

INTERROGATORY NO. 15:

Identify all media through which Respondent's "MDX" products have been advertised or otherwise promoted.

RESPONSE:

INTERROGATORY NO. 16:

Identify the person or persons responsible for the promotion and marketing of the goods and services marketed by Respondent under or in association with "MDX."

RESPONSE:

INTERROGATORY NO. 17:

Describe the customers or potential customers to whom Respondent markets and/or sells its "MDX" goods and services and the channels of trade through which such goods and services are or will be sold.

RESPONSE:

INTERROGATORY NO. 18:

If Respondent has ever discontinued the use of "MDX" as a mark,

- (a) State the inclusive dates of each period of non-use;
- (b) State the reason(s) for discontinuance of use.

RESPONSE:

INTERROGATORY NO. 19:

If Respondent has ever licensed, assigned, or transferred to any person or entity, any rights claimed by Respondent in its "MDX" mark,

- (a) Identify each such person or entity;
- (b) State the dates of commencement and termination of each such license, assignment or transfer;
- (c) Identify the specific goods or services involved in each such license, assignment or transfer; and
- (d) Identify the person most knowledgeable as to each such license, assignment or transfer.

RESPONSE:

INTERROGATORY NO. 20:

If any rights claimed by Respondent in its MDX mark were acquired by license, assignment, or transfer from any person or entity,

- (a) Identify each such person or entity;
- (b) State the dates of commencement and termination of each such license, assignment or transfer;
- (c) Identify the specific goods or services involved in each such license, assignment or transfer; and
- (d) Identify the person most knowledgeable as to each such license, assignment or transfer.

RESPONSE:

INTERROGATORY NO. 21:

If you contend that "MDX" is inherently distinctive as used in connection with the marketing and sale of Respondent's products and services, state the complete factual and legal basis of that contention.

RESPONSE:

INTERROGATORY NO. 22:

If you contend that "MDX" as used in connection with the marketing and sale of Respondent's products and services has acquired secondary meaning, state the complete factual and legal basis of that contention.

RESPONSE:

INTERROGATORY NO. 23:

Identify each person Respondent intends to call as a witness during the testimony period in this matter and state the subject matters as to which such witness is expected to testify.

RESPONSE:

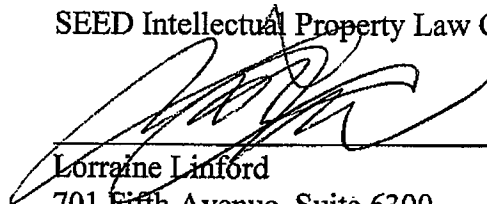
INTERROGATORY NO. 13:

Identify each person who has furnished information or otherwise assisted in the preparation of an answer to one or more of these interrogatories and identify each specific answer or answers for which each such person provided information or other assistance.

RESPONSE:

DATED this 14th day of July, 2003.

SEED Intellectual Property Law Group PLLC



Lorraine Linford
701 Fifth Avenue, Suite 6300
Seattle, Washington 98104
Telephone: (206) 622-4900

Attorneys for Respondent
ICOGEN CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2003, the foregoing **PETITIONER QIAGEN GMBH'S FIRST SET OF INTERROGATORIES TO RESPONDENT** was served upon the Petitioner's counsel of record by United States first-class mail, postage prepaid, addressed as follows:

Bruce W. Schwab, Esq.
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834



Annette Baca

384052_1.DOC

EXHIBIT 2

INSTRUCTIONS

Unless otherwise indicated, the following definitions and instructions shall be applicable:

A. "Petitioner" or "QIAGEN" means QIAGEN GmbH and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiary or affiliate, predecessors, successors, assignees, agents, representatives, and attorneys, and any persons who at any time acted by, through, or on behalf of any of them.

B. "Respondent," "Bio-Rad," "you" or "your" means Bio-Rad Laboratories, Inc. and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiary or affiliate, predecessors, successors, assignees, agents, representatives, and attorneys, and any persons who at any time acted by, through, or on behalf of any of them.

C. The "'028 Registration" refers to Respondent's United States Trademark Registration No. 2,108,028, which is the subject of this proceeding.

D. "Respondent's Mark" or "MDX" refers to the alleged trademark shown in the '028 Registration.

E. "Documents" shall have the same meaning and scope as in Rule 34(a) of the Federal Rules of Civil Procedure and shall include without limitation correspondence, memoranda, reports, minutes of meetings, agreements, notes, studies, plans, analyses, work papers, statistical and financial records, stationery, letterhead, press releases, records or notes of meetings, conferences, telephone calls, or other conversations, invoices, checks, printouts, photographs, microfilms, microfiche, data processing tapes, disks, or other records, phonographs, tape or other recordings, data compilations and all copies of any documents that contain any notation or otherwise differ from the original or other copies, in the possession, custody, or under the control of Applicant, and specifically including any and all drafts of the above and any and all handwritten notes or notations in whatever form.

F. Wherever used herein, the singular shall be deemed to include the plural, the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine and the feminine shall be deemed to include the masculine; the disjunctive ("or") shall be deemed to include the conjunctive ("and"), and the conjunctive ("and") shall be deemed to include the disjunctive ("or"); and each of the functional words "each," "every," "any" and "all" shall be deemed to include each of the other functional words.

G. A document "relating," "related," or "which relates" to any given subject means any document that constitutes, contains, embodies, evidences, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

H. If a claim of privilege is asserted concerning any document responsive to any request, please:

1. Identify the document with sufficient particularity to allow Opposer to bring the matter before the Board. That identification should include its date, author, recipients and subject matter;

2. State the nature of the privilege asserted; and

3. State in detail the actual basis for the claim of privilege.

I. To the extent that you consider any of the following document requests subject to objection, respond to that part of each document requests to which you do not object, and separately describe that part of the document requests to which you object and each ground for objection.

J. If only a portion of a document is subject to a claim of privilege, please delete that portion and produce the remainder of the document.

K. All documents produced in response to these requests should be arranged as they are kept in the ordinary course of business, or should be organized and labeled to correspond with the number of the request or requests to which they are responsive.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

Produce all documents identified in response to Petitioner's First Set of Interrogatories and/or were relied on by Respondent as a source of information responsive to any of those interrogatories.

RESPONSE:

DOCUMENT REQUEST NO. 2:

Produce documents sufficient to establish each product or service ever sold or provided by Respondent under or in association with "MDX."

RESPONSE:

DOCUMENT REQUEST NO. 3:

Produce all documents that evidence, relate or refer to Respondent's claimed first use for each of its "MDX" products or services, or that may be relied upon by Respondent to prove prior rights in "MDX" whether acquired by way of first use, use analogous to trademark use, constructive use or first use in commerce.

RESPONSE:

DOCUMENT REQUEST NO. 4:

Produce documents sufficient to establish continuous use of "MDX" by Applicant from the date of first use to present.

RESPONSE:

DOCUMENT REQUEST NO. 5:

Produce all documents that refer or relate to the selection and/or adoption of "MDX" for Respondent's use.

RESPONSE:

INTERROGATORY NO. 5:

Identify all individuals who were involved in the process of selecting "MDX" for Respondent's use.

RESPONSE:

INTERROGATORY NO. 6:

Identify the individual primarily responsible for Respondent's adoption of "MDX" for use as a mark.

RESPONSE:

INTERROGATORY NO. 7:

If Respondent is aware of any use of the term MDX in connection with molecular diagnostics products and/or services by any person or entity other than the parties to this proceeding,

- (a) Identify each such person or entity;
- (b) Identify the products and/or services sold;
- (c) State when Respondent became aware of such use;
- (d) Describe how Respondent became aware of such use.

RESPONSE:

INTERROGATORY NO. 8:

If Respondent is aware of any use by any person or entity of the term MDX as a descriptive term or acronym used in connection with molecular diagnostics,

- (a) Describe how and when the term was used;
- (b) Identify the person or entity using the term;
- (c) State when Respondent became aware of such use;
- (d) Describe how Respondent became aware of such use.

RESPONSE:

INTERROGATORY NO. 9:

Identify all searches and/or investigations conducted or caused to be conducted, or any opinions received by Respondent, on a formal or informal basis, concerning availability and possible conflicts arising out of Respondent's use or adoption of "MDX."

RESPONSE:

INTERROGATORY NO. 10:

State whether Respondent has ever received any opinion, formal or informal, concerning possible trademark conflicts with Petitioner, and for each such opinion identify the date thereof and identify each and every person who prepared such opinion or who has any knowledge of the preparation or results of such opinion.

RESPONSE:

INTERROGATORY NO. 11:

Identify any trademark dispute(s) relating to the use or registration of Respondent's "MDX," including, without limitation, litigation, opposition proceedings, cancellation proceedings, cease and desist requests and/or informal objections, in which Respondent and a party other than Opposer have ever been involved.

RESPONSE:

INTERROGATORY NO. 12:

With respect to each dispute or objection identified in your response to Interrogatory No. 11:

- (a) State the date of commencement and date of termination;
- (b) Identify the adverse party or parties;

- (c) Describe the present status of the matter;
- (d) If the matter has been resolved, state the manner in which it was resolved;
- (e) Identify the person within Respondent's organization most knowledgeable as to the facts set forth in response to subparts (a) through (e) above.

RESPONSE:

INTERROGATORY NO. 13:

State the annual gross dollar revenue derived by Respondent for all products or services sold under or in connection with "MDX" for each year since commencement of use to present.

RESPONSE:

INTERROGATORY NO. 14:

State the dollar amount expended, on a yearly basis, in promoting and advertising Respondent's "MDX" products and/or services.

RESPONSE:

INTERROGATORY NO. 15:

Identify all media through which Respondent's "MDX" products have been advertised or otherwise promoted.

RESPONSE:

INTERROGATORY NO. 16:

Identify the person or persons responsible for the promotion and marketing of the goods and services marketed by Respondent under or in association with "MDX."

RESPONSE:

INTERROGATORY NO. 17:

Describe the customers or potential customers to whom Respondent markets and/or sells its "MDX" goods and services and the channels of trade through which such goods and services are or will be sold.

RESPONSE:

INTERROGATORY NO. 18:

If Respondent has ever discontinued the use of "MDX" as a mark,

- (a) State the inclusive dates of each period of non-use;
- (b) State the reason(s) for discontinuance of use.

RESPONSE:

INTERROGATORY NO. 19:

If Respondent has ever licensed, assigned, or transferred to any person or entity, any rights claimed by Respondent in its "MDX" mark,

- (a) Identify each such person or entity;
- (b) State the dates of commencement and termination of each such license, assignment or transfer;
- (c) Identify the specific goods or services involved in each such license, assignment or transfer; and
- (d) Identify the person most knowledgeable as to each such license, assignment or transfer.

RESPONSE:

INTERROGATORY NO. 20:

If any rights claimed by Respondent in its MDX mark were acquired by license, assignment, or transfer from any person or entity,

- (a) Identify each such person or entity;
- (b) State the dates of commencement and termination of each such license, assignment or transfer;
- (c) Identify the specific goods or services involved in each such license, assignment or transfer; and
- (d) Identify the person most knowledgeable as to each such license, assignment or transfer.

RESPONSE:

INTERROGATORY NO. 21:

If you contend that "MDX" is inherently distinctive as used in connection with the marketing and sale of Respondent's products and services, state the complete factual and legal basis of that contention.

RESPONSE:

INTERROGATORY NO. 22:

If you contend that "MDX" as used in connection with the marketing and sale of Respondent's products and services has acquired secondary meaning, state the complete factual and legal basis of that contention.

RESPONSE:

INTERROGATORY NO. 23:

Identify each person Respondent intends to call as a witness during the testimony period in this matter and state the subject matters as to which such witness is expected to testify.

RESPONSE:

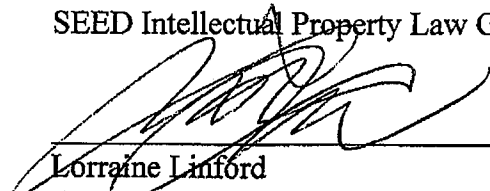
INTERROGATORY NO. 13:

Identify each person who has furnished information or otherwise assisted in the preparation of an answer to one or more of these interrogatories and identify each specific answer or answers for which each such person provided information or other assistance.

RESPONSE:

DATED this 14th day of July, 2003.

SEED Intellectual Property Law Group PLLC



Lorraine Linford
701 Fifth Avenue, Suite 6300
Seattle, Washington 98104
Telephone: (206) 622-4900

Attorneys for Respondent
ICOGEN CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2003, the foregoing **PETITIONER QIAGEN GMBH'S FIRST SET OF INTERROGATORIES TO RESPONDENT** was served upon the Petitioner's counsel of record by United States first-class mail, postage prepaid, addressed as follows:

Bruce W. Schwab, Esq.
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834



Annette Baca

384052_1.DOC

EXHIBIT 3

November 8, 2006

Lorraine Linford
Direct Line: (206) 694-4826
lorrainel@SeedIP.com

Via Facsimile (415) 576-0300

Bruce W. Schwab, Esq.
Townsend and Townsend and Crew LLP
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834

Re: *QIAGEN GmbH v. Bio-Rad Laboratories, Inc.*
Your Ref: 002558-069100US
Seed IP Ref: 770025.803

Dear Bruce:

As you know, I am still waiting for a formal response to my March 20, 2006 settlement letter.

On September 19, 2006, I wrote to you and asked that you let me know whether or not Bio-Rad is willing to settle this matter on the terms set forth in my March 20 letter. Your office advised me that you were out of the country at that time but would be returning to the office in early October. That was a month ago, and I have heard nothing further from you.

Given the lack of the response, I feel compelled to go forward with discovery, as proceedings resume December 17, 2006, only a little more than a month away, and QIAGEN's testimony period opens only two months thereafter.

Enclosed with this letter are copies of QIAGEN's First Set of Interrogatories and First Set of Requests for Production, which were served July 14, 2006. Unless we receive Bio-Rad's agreement to QIAGEN's settlement proposal or a counterproposal by November 17, 2006, we require that Bio-Rad respond to the enclosed discovery requests by no later than December 15, 2006.

Please call me if you wish to discuss this matter.

Very truly yours,

Seed IP Law Group PLLC

Lorraine Linford/ab

Lorraine Linford

Enclosure:

Petitioner's First Set of Interrogatories
Petitioner's First Set of Requests for Production

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Seed Intellectual Property Law Group PLLC

address 701 Fifth Avenue
Suite 5400
Seattle, WA 98104
phone 206.622.4900
cfmfile 206.682.6031
envelope SeedIP.com

EXHIBIT 4

December 11, 2006

Lorraine Linford
Direct Line: (206) 694-4826
lorrainel@SeedIP.com

Via Facsimile (415) 576-0300

Bruce W. Schwab, Esq.
Townsend and Townsend and Crew LLP
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834

WITHOUT PREJUDICE

Re: *QIAGEN GmbH v. Bio-Rad Laboratories, Inc.*
Your Ref: 002558-069100US
Seed IP Ref: 770025.803

Dear Bruce:

Thank you for your letter of November 17, 2006. I have reviewed your settlement counterproposal with my client, and they find it to be unacceptable.

address 701 Fifth Avenue
Suite 5400
Seattle, WA 98104
ophone 206.622.4900
calmle 206.682.6031
website SeedIP.com

Seed Intellectual Property Law Group PLLC

EXHIBIT 4

REDACTED FOR
CONFIDENTIALITY
(SETTLEMENT)

If Bio-Rad is unwilling to resolve this matter as outlined above, my client has instructed me to proceed with the cancellation action.

Accordingly, please let me know by no later than 5:00 PM, December 15, 2006 whether Bio-Rad will agree to the terms set forth in this letter. If so, I will prepare an agreement for the parties' signatures.

Very truly yours,
Seed IP Law Group PLLC



Lorraine Linford

EXHIBIT 5

Annette Baca

From: Lorraine Linford
Sent: Friday, February 09, 2007 6:22 PM
To: 'Schwab, Bruce W. '
Cc: Colleen Menth; Arante, Anna Marie M.; Annette Baca
Subject: RE: Qiagen/Bio-Rad - 770025.803

Thanks Bruce. Based on your email, it appears that all issues between the parties have been resolved and all that remains is to have the Agreement signed by the parties. If you disagree, and believe that issues remain, please let me know.

While we await signatures, please note that our testimony period opens Thursday, February 15, 2007. Since it appears unlikely that we will have the Agreement fully executed by that date, I am planning to file a Motion to Compel and Motion to Suspend early next week, in order to meet the cutoff for discovery motions. I hope you can appreciate that this is necessary to fully protect the client's rights while we wait for signatures. Once the Agreement is fully signed, we will of course proceed with the dismissal of this cancellation proceeding.

I look forward to hearing from you and receiving the executed agreement at your earliest convenience. Thanks.

Lorraine

-----Original Message-----

From: Schwab, Bruce W. [mailto:bwschwab@townsend.com]
Sent: Friday, February 09, 2007 1:40 PM
To: Lorraine Linford
Cc: Colleen Menth; Arante, Anna Marie M.; Ann tte Baca
Subject: RE: Qiagen/Bio-Rad - 770025.803

Lorraine - - Just learned that Bio-Rad accepts your amendment to Par. 4.

I regret I'm not yet in a position to forward an executed agreement and need to obtain additional clarification from the client.

I expect to be in touch with you no later than early next week.

Thank you.

Bruce

EXHIBIT 5